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| ESTATE OF CLAYTON DANIEL PRAIRIE CHIEF, SR. | : | Order Vacating Decision and Remanding Matter for Rehearing |
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| | : | Docket No. IBIA 93-35 |
| | : | |
| | : | July 28, 1993 |

Appellants Clayton D. Prairie Chief, Jr., Martin Daniel Prairie Chief, Charles Lee Prairie Chief, and Daniel Lee Prairie Chief 1/ seek review of a November 4, 1992, order denying rehearing issued by Administrative Law Judge William E. Hammett in the estate of Clayton Daniel Prairie Chief, Sr. (decedent). The denial of rehearing let stand an August 28, 1992, order approving will issued by Administrative Law Judge Sam E. Taylor. For the reasons discussed below, the Board of Indian Appeals (Board) vacates both orders and remands this case for rehearing. 2/

Decedent, an unallotted member of the Cheyenne and Arapaho Tribes of Oklahoma, was born on September 27, 1935, and died testate on January 30, 1991. Judge Taylor held a hearing to probate decedent's trust estate on May 6, 1992. Decedent's last will and testament, dated June 2, 1987, was presented at the hearing. The will provided that decedent's trust estate was to be divided equally among appellants. No objections to the will were raised at the hearing. Testimony disclosed, however, that decedent had at least two other children, a son, Larry Prairie Chief whom it was believed might be deceased; and a daughter, Patsy, whose whereabouts were unknown. Although appellants did not reveal the existence of these children, they did not dispute that they were also decedent's children.

Neosha Karen Broyles entered a claim against decedent's estate in the amount of $31,733.09, for alleged delinquent child support payments. This claim was supported by a February 19, 1982, decree of divorce entered by the District Court of Canadian County, Oklahoma, which awarded Broyles custody

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1/ The Board received a telephone call from Neosha Karen Broyles, mother of Daniel Lee Prairie Chief, indicating that Daniel was not an appellant in this matter. In its Feb. 4, 1993, notice of docketing, the Board requested that Daniel clarify whether or not he was appealing the decision. Daniel did not respond. According to the record, Daniel was born on Sept. 24, 1973, and so has reached the age of 18, and is legally competent to speak for himself. In the absence of confirmation from Daniel that he is not an appellant, he will be treated as one for the purposes of this decision.

2/ Judge Taylor retired effective Aug. 28, 1992. Judge Hammett provided coverage of the Oklahoma City office during part of the period that office was without an Administrative Law Judge. Administrative Law Judge Richard L. Reeh has since replaced Judge Taylor.

of Daniel and supervisory custody of Clayton and Charles, 3/ with a child support payment award of $400 per month beginning in March 1982, and continuing until each child reached his majority, or until further order of the court. Evidence presented indicated that Broyles had once had decedent incarcerated for failure to pay child support, but had not prosecuted the case.

Clayton objected to Broyles' claim on the grounds that decedent and she had an agreement under which she lived rent-free in a house that was apparently built through the Cheyenne and Arapaho Housing Authority on land that had belonged to decedent's grandmother and for which both decedent and Broyles signed the lease. Clayton also alleged that Broyles had withdrawn funds belonging to himself and one of his brothers, apparently while they were minors, and that Broyles' claim should be reduced in the amount of the funds withdrawn.

In his August 28, 1992, order approving will, Judge Taylor found that decedent's heirs-at-law were appellants here and Patsy Faye Winship Morales, nee Patricia Carol Prairie Chief. The Judge found that Patsy had been adopted, but was still an heir of her natural father. 4/ Judge Taylor approved Broyles' claim in the reduced amount of $15,000.

By letter dated October 27, 1992, Clayton sought rehearing. Rehearing was denied by Judge Hammett on November 4, 1992.

The Board received appellants' notice of appeal from these orders on December 31, 1992. Appellants were informed of their right to file a brief by the Board's February 4, 1993, notice of docketing. Clayton requested and was granted an extension of time to file a brief until April 12, 1993. No further extension was requested and no briefs have been filed.

The Board finds there are numerous procedural and substantive problems with the orders under review. Some of these matters were questioned by appellants in their notice of appeal; some are raised by the Board under its authority to "exercise the inherent authority of the Secretary to correct a manifest injustice or error." 43 CFR 4.318. Because of the significance of the problems, the Board finds that the August 28 and November 4, 1992, orders must be vacated and the matter remanded for rehearing. On rehearing, the Administrative Law Judge should address the following matters as well as any others that may be discovered in the course of rehearing. The Board purposely only raises these problems, without passing initial judgment as to any of them. Such initial decisions are within the province of the Administrative Law Judge.

1. Judge Taylor's order concludes that Patsy Faye Winship Morales, nee Patricia Carol Prairie Chief, is an heir of decedent. The order further states that Patsy was adopted. However, except for uncorroborated testimony

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3/ As mentioned in footnote 1, Broyles is Daniel's mother. Clayton and Charles are the sons of Louise Thunderball, decedent's second wife.

4/ Appellants' notice of appeal indicates that they are confused by the fact that Judge Taylor approved decedent's will, but also determined his heirs. This issue can be clarified during the rehearing.

at the hearing, the record is devoid of evidence that Patsy is Patricia; that Patricia was decedent's daughter; or that Patricia was adopted. If Patricia and Patsy are, in fact, the same person and decedent's daughter, there is no evidence that she was given notice of the hearing and an opportunity to challenge the will. Accordingly, she may have been denied due process.

2. Evidence was presented at the hearing indicating that decedent also had another son, Larry Prairie Chief. Although it was believed that Larry was deceased, there is no evidence in the record concerning this individual, and Judge Taylor's order does not mention him.

3. Judge Taylor allowed Broyles' claim against decedent's estate in the amount of $15,000. At page 14 of the transcript of the May 6, 1992, hearing, Judge Taylor stated: "I'll have to take under advisement this claim of [Broyles']. I will say one thing, part of it exceeds the Statute of Limitations to start with, there is no question about that. There is a three year statute of limitations on here, so I can't go behind that." As relevant to Broyles' claim, Judge Taylor's order states at page 3:

> Decedent's former wife, Neosha Karen Broyles, filed a claim for back child support in the amount of $31,733.09. The decedent's estate is valued at $18,631.81 and claims cannot be allowed in excess thereof. [5/] Further, claims are paid only from income to the estate. Accordingly, the claim of Neosha Karen Broyles is allowed in the amount of $15,000.00.

The amount of $15,000 exceeds Broyles' claim for the 3 years preceding decedent's death. Judge Taylor's order does not mention the statute of limitations. If Oklahoma limits the time during which delinquent child support payments can be collected, this limitation should have been applied. 43 CFR 4.250(e). If there is no limitation, the Judge should have so indicated in light of his unequivocal statement at the hearing that there was an applicable statute of limitations.

4. It appears that Judge Taylor arrived at the amount of $15,000 for Broyles' claim by subtracting the total amount of all other allowed claims from the total appraised value of the estate and rounding down. The Judge, however, is required to set forth the reasons for his decision, not merely to leave them to speculation. As it stands now, without explanation, the order appears arbitrary and capricious.

5. At the hearing, Clayton objected to Broyles' claim on the grounds that decedent and Broyles had agreed that Broyles would be allowed rent-free use of a house in exchange for the child support payments, and that Broyles had withdrawn and used funds belonging to Clayton and one other of decedent's sons, apparently during the time they were minors. Judge Taylor did not address either of these contentions in considering Broyles' claim.

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5/ This statement is based upon 43 CFR 4.251(c), which provides: "In no event shall claims be allowed [against a decedent's estate] in an aggregate amount which is in excess of the valuation of the estate."

Judge Hammett concluded that the contention concerning use of the house could not be considered, apparently because no written agreement was presented. He additionally stated that child support payments were for the benefit of the children, not the mother, and the mother could not bargain away the rights of the children. The use of a rent-free house would appear to be as much for the benefit of the children as for the mother, both as to providing shelter for the children and allowing other family income to be applied toward their welfare. The Board believes inadequate consideration may have been given to this allegation.

Judge Hammett characterized Clayton's second contention as misappropriation of funds, and found that this contention could not be considered because it was a claim sounding in tort and thus was prohibited by 43 CFR 4.250(f). 6/ Assuming that the contention was properly characterized, the Judge may have incorrectly applied the cited regulation. In context, it appears that the regulation concerns the approval of tort claim against a decedent's estate. Here, the allegation was made in opposition to a claim against the estate. It is possible that the regulation would not prohibit such a defensive use of a tort claim. Again, this allegation may have received inadequate consideration.

6. Broyles' claim is unsupported by any documentation other than the divorce decree and a table showing each year and month and the amount of the claimed delinquent payment for that month. The table appears to decrease at the proper months as each of the three children reached majority. Broyles also included a claim for payments after decedent's death.

It is questionable whether Broyles has adequately supported her claim. Also, it is possible that she would not be entitled to child support payments after the date of decedent's death. This issue may require further examination.

7. Decedent owned a 1/90 interest in the allotment of Meat, Cheyenne Allottee 2946. This interest produced less than $100 income each year from 1987 through 1991. Accordingly, it was subject to a rebuttable presumption of escheat under 25 U.S.C. § 2206(a) (1988). Evidence was presented and accepted that the interest had earned more than $100 in 1992. Judge Taylor's order states at page 2 that decedent's interest in this allotment passed to appellants "contingent upon such interest continuing to produce more than $100 for each of the next four (4) years commencing January 30, 1992."

This statement may be an incorrect interpretation of the escheat provisions of section 2206(a). The section provides in relevant part that any undivided interest held by a decedent will escheat to the appropriate tribe if the interest is less than 2 percent of the total acreage in the tract

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6/ Section 4.250(f), which is a subpart of a broader section dealing with claims against a deceased Indian's trust estate, provides:

"Claims sounding in tort not reduced to judgment in a court of competent jurisdiction, and other unliquidated claims not properly within the jurisdiction of a probate forum, may be barred from consideration by an administrative law judge's interim order."

"and is incapable of earning $100 in any one of the five years from the date of the decedent's death." The fact that the interest earned $100 in any one of the five years following the decedent's death my be sufficient to rebut the presumption that it escheats, without requiring that it earn more than $100 in each of the five years.

8. The accuracy of the inventory of decedent's trust assets was questioned in the petition for rehearing and notice of appeal. Judge Taylor stated at page 14 of the May 6, 1992, hearing transcript: "Everyone will get a copy of the order [approving will] and a copy of the inventory showing what property the decedent had at the time of death." It appears that appellants did not see the inventory of decedent's trust assets until the August 28, 1992, order was issued.

In the Estate of Douglas Leonard Ducheneaux, 13 IBIA 169, 92 I.D. 247 (1985), the Board held that challenges to the inventory of a decedent's trust assets can be considered during the probate hearing. 7/ In order for such challenges to be raised during the probate hearing, the parties must know the contents of the inventory at least at the tine of the hearing. Although, as Judge Hammett noted, there are procedures for challenging the inventory outside the probate hearing, see 25 CFR Part 150 and especially 25 CFR 150.7, Ducheneaux specifically sought to avoid bifurcated proceedings before the Administrative Law Judge and the Bureau of Indian Affairs regarding the accuracy of the estate inventory. Consideration of these challenges in the probate hearing was supported by the Office of the Solicitor.

It appears that appellants' questions concerning the accuracy of the estate inventory should be considered on rehearing.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the August 28, 1992, order approving will issued by Judge Taylor and the November 4, 1992, order denying rehearing issued by Judge Hammett are vacated and this matter is remanded to Judge Reeh for rehearing.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

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7/ Although parts of Ducheneaux were reversed and/or modified on appeal, the portion dealing with the consideration of the accuracy of the inventory was not disturbed. See Ducheneaux v. Secretary of the Interior, 645 F.Supp. 930 (D.S.D. 1986); rev'd, No. 87-5024 (8th Cir. Jan. 26, 1988); cert. denied, 486 U.S. 1055 (1988).